

**REMARKS**

Claims 1-27 remain present in the application. Claims 1-3 and 15 have been amended. Claims 1-4, 7, 11, 14 and 15 are independent. Reconsideration of this application, as amended, is respectfully requested.

**Restriction Requirement**

The Examiner has withdrawn the restriction requirement dated November 26, 2002. Applicant appreciates the Examiner's withdrawal of the restriction requirement and examination of claims 1-27.

**Rejection Under 35 U.S.C. § 112**

Claims 1-3 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

The Examiner asserts that claims 1-3 are unclear with regard to whether the desired variable is limited to the recited formula or merely optional. As the Examiner will note, claims 1-3 have been amended to recite "being determined by" in order to clarify that the desired variables are limited to the recited formula.

In view of the above amendments and remarks, Applicant respectfully submits that claims 1-3 are definite and clear. Accordingly, reconsideration and withdrawal of the Examiner's rejection under 35 USC § 112, second paragraph are respectfully requested.

**Rejections Under 35 U.S.C. §§ 102 and 103**

Claims 1, 2 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ranjith, GB 2 220 250. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ranjith. These rejections are respectfully traversed.

With regard to the Examiner's rejection of claims 1 and 2 in view of the Ranjith reference, as mentioned above, claims 1 and 2 have been amended to require that the diameter of the sampling orifice is "determined by" the respective formula recited in these claims. Since the Ranjith reference is silent with regard to the particular formula recited in independent claims 1 and 2, Applicant respectfully submits that the Ranjith reference fails to anticipate these claims.

With regard to independent claim 15, this claim is directed to an apparatus for moving a sample of a flowable material through a ferrule in a wall of a vessel or conduit, wherein a combination of elements are recited including "said orifice having a longitudinal

axis extending through a center thereof, and wherein said longitudinal axis of said orifice is generally parallel to and offset from the longitudinal axial of said internal bore." Applicant respectfully submits that the Ranjith reference fails to teach or suggest the above aspect of the presently claimed invention.

Referring to Fig. 1a of Ranjith, a longitudinal axis of the ferrule is generally defined by an axis of the pin 15. In addition, a longitudinal axis of the interior passage 6 of the valve is generally parallel to and offset from the longitudinal axis of the internal bore of the ferrule. However, the interior passage 6 includes a radially extending section 6a which has a longitudinal axis which is generally perpendicular to the longitudinal axis of the internal bore of the ferrule. In addition, the orifice which is formed at a bottom end of the radially extending section 6a also has a longitudinal axis which is generally perpendicular to the longitudinal axis of the internal bore of the ferrule. In view of this, the Ranjith fails to disclose that the longitudinal axis of the orifice is "generally parallel to and offset from the longitudinal axis of said internal bore" as required by independent claim 15 of the present invention. Accordingly, the Ranjith reference fails to anticipate independent claim 15 of the present invention.

With regard to the obviousness of modifying the Ranjith reference to have an orifice which is generally parallel to the longitudinal axis of the internal bore, Applicant respectfully submits that if such a modification were made, the Ranjith device would not operate since it would be impossible to open and close the orifice. As can be clearly understood from Figure 1a, the orifice is opened and closed by moving the orifice with respect to the ferrule. If the orifice was oriented such that the longitudinal axis of the orifice was parallel to the pin 15, such movement would not open and close the orifice and therefore the Ranjith device would not operate as intended.

With regard to the obviousness of claim 17, Applicant respectfully submits that this claim is allowable due to its dependence upon allowable independent claim 15, as well as due to the additional recitations in this claim. With specific regard to the Examiner's modification of the Ranjith reference to arrive at claim 17, since claim 17 is believed to be allowable due to its dependence on independent claim 15, Applicant provides no comments with regard to the Examiner's modification at this time.

In view of the above amendments and remarks, Applicant respectfully submits that claims 1, 2, 15 and 17 clearly define the present invention over the Ranjith reference relied on by the Examiner. Accordingly, reconsideration and withdrawal of the

Examiner's rejections under 35 U.S.C. §§ 102 and 103 are respectfully requested.

**Double Patenting**

Claims 3-9 and 11-13 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4 and 5 of U.S. Patent No. 6,133,022 in view of Meyer, U.S. Patent No. 4,669,321. Since the Examiner's rejection is an obviousness-type rejection, Applicant has prepared a Terminal Disclaimer in order to overcome the Examiner's double patenting rejection. The Terminal Disclaimer and the corresponding fee of \$55.00 is attached hereto for the Examiner's consideration.

In view of the Terminal Disclaimer, Applicant respectfully submits that the Examiner's obviousness-type double patenting rejection of claims 3-9 and 11-13 has been overcome. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

**Allowable Subject Matter**

Claim 14 has been indicated by the Examiner as being allowed. In addition, claims 10, 16 and 18-27 have been indicated as being objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all

of the limitations of the base claim and any intervening claims. Applicant greatly appreciates the indication of allowable subject matter by the Examiner.

For the reasons mentioned above, Applicant submits that claims 1-9, 11-13, 15 and 17 are also in condition for allowance. Accordingly, all of claims 1-27 present in the application are in condition for allowance. Favorable consideration and allowance of the above-identified application are therefore respectfully requested.

### CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicant respectfully petitions for a one (1) month extension of time for filing a response in connection with the present application and the required fee of \$55.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

Joe McKinney Muncy, #32,334

P.O. Box 747

Falls Church, VA 22040-0747

(703) 205-8000

KM/PCL/mlr  
2153-0110P

for

#43,368